



STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the First-Party Request for
Advisory Opinion Concerning the Conduct
of **Robert Moore**, Member,
Public Employees Benefit Plan Board,
State of Nevada,

Request for Opinion No. **11-99A**

Public Officer.

OPINION

Public officer, Robert Moore (“Moore”), requested this advisory opinion from the Nevada Commission on Ethics (“Commission”) pursuant to NRS 281A.440(1) regarding the propriety of his anticipated future conduct as it relates to the Ethics in Government Law (Ethics Law) set forth in chapter 281A of the Nevada Revised Statutes (“NRS”). A quorum¹ of the Commission heard this matter on January 18, 2012. Moore appeared in person, and provided sworn testimony.

After fully considering Moore’s request and analyzing the facts, circumstances and testimony he presented, the Commission deliberated and orally advised Moore of its decision. The Commission now renders this written Opinion.

Moore presented the facts in written and oral testimony. Facts and circumstances that differ from those presented to, and relied upon by, the Commission in this Opinion may result in different findings and conclusions than those expressed in this opinion.

I. QUESTION PRESENTED

Moore serves as an appointed member of the Board of the Public Employees’ Benefits Program. Moore questions whether his son’s employment creates a conflict of interest concerning a proposed bid for a contract being considered by the Board.

¹ The following Commissioners participated in this opinion: Chairman Beyer and Commissioners Cory, Gale, Groover, Lamboley, Shaw and Weaver.

II. FINDINGS OF FACT

1. In his public capacity, Moore serves as a member of the Board of the Public Employees' Benefits Program ("PEBP") created pursuant to NRS 287.041 ("PEBP Board").
2. The PEBP is a program established and administered by the PEBP Board pursuant to NRS 287.043. Among other activities, the PEBP Board purchases policies of group life, accident and health insurance and provides health insurance through plans of self-insurance for eligible public employee participants.
3. In establishing and administering the program, the PEBP Board contracts with various insurance companies to provide insurance coverage for program participants.
4. The PEBP Board recently considered and approved the bid specifications for a request for proposals ("RFP") from insurance companies to underwrite the coverage for the HMO plan in Southern Nevada for the upcoming plan term. The plan is currently underwritten by Sierra Health and Life Insurance Company ("Sierra Health") which is expected to respond to the RFP to continue its service for the upcoming plan term.
5. Sierra Health is one of several businesses owned by parent company, UnitedHealth Group ("UHG").
6. UHG consists of two separate operating groups, UnitedHealthcare ("UHc") and Optum. Although UHG owns both UHc and Optum, they operate as independent businesses.
7. UHc consists of three businesses (UHc Employer & Individual, UHc Medicare & Retirement and UHc Community & State) which offer and administer insurance and benefit plans. Sierra Health is one of dozens of health insurance companies owned by UHc Employer & Individual.
8. Optum also consists of three businesses (OptumHealth, OptumRx and Optuminsight) which provide various healthcare services. Optum is not involved in the insurance and benefits businesses, or in the functions or operations of UHc or Sierra Health.
9. OptumHealth employs Moore's son as the Vice President of Operations. Moore's son develops customer service strategies, manages call center operations (which explain benefits and claims to members and providers of its services) and administers pay claims. He has no interaction with Sierra Health, is not acquainted with anyone employed by Sierra Health and he has no incentive, reward or financial impact due to Sierra Health's performance. Sierra Health falls outside of Optum's reporting structure.
10. Sierra Health is expected to appear before the PEBP Board in the future on various matters involving contracts for underwriting or the provision of insurance coverage to PEBP.
11. Out of caution, Moore disclosed his perceived conflict of interest based on his son's employment and abstained from voting on a matter before the PEBP Board involving Sierra Health. However, Moore is not convinced that abstention was (or should be) required due to the attenuation between Sierra

Health and his son's employment interests.

III. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES

A. ISSUES

As a public officer, the Ethics Law applies to Moore's conduct. Specifically, the Ethics Law prohibits Moore, a public officer, from using his position in government to secure unwarranted privileges, preferences, exemptions or advantages for himself or any person to whom he has a commitment in a private capacity, including his son. *See* NRS 281A.400(2) and (8).

Moore is also prohibited from utilizing information acquired through his official public duties or relationships to further his own pecuniary interests or those of any other person or entity. *See* NRS 281A.400(5).

Finally, Moore is required to disclose matters to the public which reasonably affect his commitments to the interests of certain persons (his son) and abstain from voting or otherwise acting on matters in which such commitments would materially affect his independence of judgment. Abstention is warranted only in matters in which there is a clear conflict of interest that would impair a reasonable person's independent judgment. *See* NRS 281A.420(1) and (3).

Moore's son is employed by an organization which is related to an entity seeking a contract from the PEBP Board. However, based on the facts and circumstances presented, the nature of the relationship between the two companies is too attenuated for Moore to be deemed to be using his position to secure any preference (much less

unwarranted preferences under NRS 281A.400(2)) for his son or his son's employer or which would require him to abstain from acting as a member of the PEBP Board (NRS 281A.420) on matters involving Sierra Health. The Commission cautions Moore to carefully analyze his relationships and to ensure the proper separation of those interests in future matters.

B. RELEVANT STATUTES

1) Public Policy

NRS 281A.020

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

Moore currently serves as a member of the PEBP Board and must commit himself to avoid conflicts between his private interests and those of the public (and public employees) he serves. Any conflict between his duties as a member of the PEBP Board and his commitments to the private interests of his son must be considered in light of the applicable provisions set forth in NRS 281A.

With the existing separation in the business structure between Sierra Health, the entity seeking a contract from the PEBP Board, and OptumHealth, Moore's son's employer, Moore would not violate the public trust by

participating in a determination whether Sierra Health is the best qualified insurance company to be awarded a contract from the PEBP Board for the benefit of PEBP program participants. To ensure the public trust in this circumstance, Moore must disclose the nature and extent of his son's interests and ensure that contract specifications or awards do not unfairly favor Sierra Health over any other proposals.

2) Prohibition against securing unwarranted privilege

NRS 281A.400(2) provides:

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

Moore has a commitment in a private capacity to the interests of his son, a person to whom he is related within the third degree of consanguinity. *See* NRS 281A.420(8)(a)(2). Moore's son's interests include the interests of his employer,

OptumHealth (owned by Optum under parent company, UHG) and his interest in maintaining his employment status (pay scale, benefits, job title, job duties, etc.). Consideration of his son's interests are triggered by the relationship that OptumHealth (his son's employer) has to an entity appearing before the PEBP Board, Sierra Health.

The record clearly reflects that UHG serves as the parent company to two main businesses which operate separately from one another. One business group, UHc, operates businesses in the insurance and benefits field. The other business group, Optum, operates businesses in the healthcare service industry. The Optum businesses do not fall within the reporting structure of UHc or vice versa. Moore's son's job responsibilities and payment structure do not rely upon and are not directly affected by the businesses operated under the UHc group.

Optum's business operations do not consult with or contribute to the business decisions of UHc or Sierra Health, including whether to contract with the State of Nevada to provide insurance products for the PEBP.

Based on this attenuated relationship between the businesses (Sierra Health and OptumHealth) and separation of any influence or input regarding their respective business decisions, Moore could not be deemed to be using his position in any way to seek any preference, advantage or benefit for his son by acting upon a matter affecting Sierra Health. His son's employer, OptumHealth, will not be impacted in any significant manner by the business operations of Sierra Health.

While the overall success of the businesses under the UHG umbrella will ultimately benefit Optum (and thereby OptumHealth

and Moore's son), the nature of that relationship is insufficient to implicate NRS 281A.400(2).

3) Prohibition against utilizing information to further interests

NRS 281A.400(5) provides:

5. If a public officer or employee acquires, through the public officer's or employee's public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further the pecuniary interests of the public officer or employee or any other person or business entity.

If Moore acquires any information as a member of the PEBP Board that is not available to any other member of the public, he must not use that information to further his own interests or those of any other person or entity, including his son or his son's employer.

As a member of the PEBP Board, Moore has information about the bid specifications and details of other entities submitting proposals to underwrite a significant self-funded insurance program in Nevada's largest community. He is prohibited from using his position to inform Sierra Health, or any other potential vendor, of the Board's nonpublic interests and concerns in any manner that would benefit the pecuniary interests of any person. Moore testified that he has not and would not share any such information with his son or any other person outside of the PEBP environment. He also testified that he would not use any such

information to benefit his own or his son's interests.

4) Disclosure

NRS 281A.420(1) provides:

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

(a) Regarding which the public officer or employee has accepted a gift or loan;

(b) In which the public officer or employee has a pecuniary interest; or

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others,

↳ without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity.

As a public officer, Moore must publicly disclose sufficient information regarding the nature and extent of any interests he may have in any matter before the PEBP Board which would be reasonably affected by his commitment to his son. While Sierra Health's interests are remote from the interests of Moore's son as an employee and officer of OptumHealth, his son does have a generalized interest in the success of UHG, OptumHealth's parent company.

Accordingly, and consistent with the Commission's *Woodbury* opinion, Moore must disclose sufficient information concerning the nature and extent of his son's interests in UHG and how or whether those interests may be affected by any matter before the PEBP Board involving UHG in any capacity, including Sierra Health's contract. Under the circumstances presented in this matter, Moore must disclose the nature of UHG's business structure as described herein to inform the public of the remoteness between Sierra Health and his son's employer. Such disclosure must be made on the record at the time the proposals are being considered by the PEBP Board.

5) Abstention

NRS 281A.420(3) provides:

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

- (a) The public officer's acceptance of a gift or loan;
- (b) The public officer's pecuniary interest; or
- (c) The public officer's commitment in a private capacity to the interests of others.

As a public officer, Moore is prohibited from voting upon or advocating for or against the passage of a matter in which the independence of judgment of a reasonable person in his situation would be materially affected. In this case, the record reflects that

Sierra Health is owned by a company with a separate operating structure from the company which employs Moore's son. Although the two companies are ultimately owned by the same parent company, their business operations are completely independent of one another.

The facts further reveal that Moore's son does not benefit from the business of Sierra Health either financially or in his employment status. Although the overall success of the parent company trickles down to each of its businesses, any benefit to Moore's son is so remote that the benefit does not constitute a conflict of interest that would require Moore to abstain from voting. The independence of judgment of a reasonable person in Moore's position would not be materially affected by such a remote connection. Accordingly, Moore need not abstain from participating and voting on any matter affecting Sierra Health under these circumstances.

IV. CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Moore was a "public officer," as defined by NRS 281A.160.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.
3. Based on the language and intent of the provisions set forth in NRS 281A.400(2) and (5), Moore would not use his position as a member of the PEBP Board to secure unwarranted preferences for his son or use protected governmental information to further his son's pecuniary interests by considering or granting a contract to an entity (Sierra Health) which is remotely related to the

entity which employs his son (OptumHealth).

4. Although the nature of the business structure between Sierra Health and Moore's son's employer is remote, they are connected by a parent company with interests in a matter before the PEBP Board. Accordingly, pursuant to NRS 281A.420(1), Moore must disclose sufficient information concerning the nature and extent of his son's interests in the parent company (UHG) and how or whether those interests may be affected by the matter before the PEBP Board involving UHG in any capacity, including Sierra Health's proposed contract.
5. Applying NRS 281A.420(3), Moore would not be required to abstain from acting on matters involving Sierra Health before the PEBP Board. Due to the extremely remote nature of the relationship between Sierra Health and Moore's son's employer, OptumHealth, this is not a clear case in which the independence of judgment of a reasonable person in Moore's situation would be materially affected by his commitment in a private capacity to the interests of his son.

Dated this 7th day of Feb, 2012.

NEVADA COMMISSION ON ETHICS

By: 
Erik Beyer, Chairman